

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

THE CITY OF HUNTINGTON,
Plaintiff,

v.

CIVIL ACTION NO.: 3:17-cv-01362

AMERISOURCEBERGEN DRUG
CORPORATION, et al.,
Defendants.

CABELL COUNTY COMMISSION,
Plaintiff,

v.

CIVIL ACTION NO.: 3:17-cv-01665

AMERISOURCEBERGEN DRUG
CORPORATION, et al.,
Defendants.

PLAINTIFFS CITY OF HUNTINGTON AND CABELL COUNTY COMMISSIONS'
MOTION TO COMPEL

Come now Plaintiffs, CITY OF HUNTINGTON and CABELL COUNTY COMMISSION, and submit this Motion to Compel Discovery against Defendant AmerisourceBergen Drug Corporation (“ABDC”) pursuant to Rule 37 of the Federal Rules of Civil Procedure. The parties have met and conferred on the issue raised in this motion.

The Special Master is well aware of the history of this dispute, which must again be raised due to ABDC’s continued intransigence on producing the discovery ordered by the Special Master in Discovery Ruling No. 2. Specifically, ABDC has yet to comply with the Special Master’s order that it identify all due diligence related to its Huntington/Cabell County customers. Plaintiffs move now for an additional order requiring compliance.

Plaintiffs’ (First) Combined Discovery Request No. 4 asked ABDC to:

“Please produce the due diligence file for each of your customers in CT2. Please identify the Bates range which corresponds to each due diligence file to enable a jury to correlate each due diligence file to each of your customers.”

In Discovery Ruling No. 2, the Special Master ordered ABDC to identify the Bates ranges for each due diligence file for each pharmacy it served in the City of Huntington and Cabell County. *See DR 2 at 5.* Although ABDC supplemented its response on April 17, 2020, the response includes language stating that “ABDC will produce due diligence documents found in custodial files that relate to its customers in Cabell County and the City of Huntington,” but ABDC did not identify (and has not identified) any Bates numbers that correspond to those files (as it did with other responsive documents such as “dashboards” and monthly trend reports). *See Ex. A at 7.*

Although discovery closed on June 12, 2020, ABDC still has not identified where in its productions any additional due diligence documents are located, nor has it ever identified where due diligence files are located within custodial files. ABDC should therefore be compelled forthwith to identify by Bates range any documents in its productions, not previously identified, including those in custodial files, that compasses the due diligence it conducted.

As the Special Master has directed, “needle-in-haystack discovery is not appropriate with regard to Combined Request No. 4.” DR 2 at 5. Moreover, the Special Master has affirmed that decision repeatedly as to Defendant Cardinal Health (*see DR 4 and DR 7*) and there is no reason to treat ABDC’s obligation under that request any differently.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that the Court enter an order compelling ABDC to respond fully to Plaintiffs’ Combined Discovery Request No. 4 by identifying all documents it considers part of its due diligence for its CT2 customers and the

corresponding Bates numbers. Plaintiffs further respectfully request any additional relief to which they may be entitled.

Dated: July 8, 2020

RESPECTFULLY SUBMITTED,

Plaintiffs, THE CITY OF HUNTINGTON and CABELL COUNTY COMMISSION

/s/ Michael J. Fuller, Jr.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 8, 2020, a copy of the foregoing **PLAINTIFFS CITY OF HUNTINGTON AND CABELL COUNTY COMMISSIONS' MOTION TO COMPEL** was filed electronically using the Court's CM/ECF system and thereby was served upon all counsel registered in the system on July 1, 2020, and was served *via email only* to Plaintiffs listserv at MDL2804Discovery@motleyrice.com and to Defendants' CT2 listserv at Track2OpioidDefendants@reedsmit.com.

/s/ Monique Christenson
Monique Christenson (SC Bar No. 104063)
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